

Introduced by Senator Margett

January 31, 2005

An act to amend Section 1417.9 of the Penal Code, relating to biological evidence.

LEGISLATIVE COUNSEL'S DIGEST

SB 129, as introduced, Margett. Biological Evidence: storage.

Existing law requires governmental entities to retain all biological materials that have been secured in connection with a criminal case. Further, existing law provides that materials are to be retained for the period of time that any person remains incarcerated in connection with that case.

This bill would provide that governmental entities are required to retain all biological material that is secured in connection with any felony criminal case and any misdemeanor sex offense case.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1417.9 of the Penal Code is amended to
- 2 read:
- 3 1417.9. (a) Notwithstanding any other provision of law and
- 4 subject to subdivision (b), the appropriate governmental entity
- 5 shall retain all biological material that is secured in connection
- 6 with ~~a~~ *any felony criminal case and any misdemeanor sex offense*
- 7 *case* for the period of time that any person remains incarcerated
- 8 in connection with that case. The governmental entity shall have
- 9 the discretion to determine how the evidence is retained pursuant

1 to this section, provided that the evidence is retained in a
2 condition suitable for deoxyribonucleic acid (DNA) testing.

3 (b) A governmental entity may dispose of biological material
4 before the expiration of the period of time described in
5 subdivision (a) if all of the conditions set forth below are met:

6 (1) The governmental entity notifies all of the following
7 persons of the provisions of this section and of the intention of
8 the governmental entity to dispose of the material: any person,
9 who as a result of a felony conviction in the case is currently
10 serving a term of imprisonment and who remains incarcerated in
11 connection with the case, any counsel of record, the public
12 defender in the county of conviction, the district attorney in the
13 county of conviction, and the Attorney General.

14 (2) The notifying entity does not receive, within 90 days of
15 sending the notification, any of the following:

16 (A) A motion filed pursuant to Section 1405. However, upon
17 filing of that motion, the governmental entity shall retain the
18 material only until the time that the court's denial of the motion
19 is final.

20 (B) A request under penalty of perjury that the material not be
21 destroyed or disposed of because the declarant will file within
22 180 days a motion for DNA testing pursuant to Section 1405 that
23 is followed within 180 days by a motion for DNA testing
24 pursuant to Section 1405, unless a request for an extension is
25 requested by the convicted person and agreed to by the
26 governmental entity in possession of the evidence.

27 (C) A declaration of innocence under penalty of perjury that
28 has been filed with the court within 180 days of the judgment of
29 conviction or July 1, 2001, whichever is later. However, the court
30 shall permit the destruction of the evidence upon a showing that
31 the declaration is false or there is no issue of identity that would
32 be affected by additional testing. The convicted person may be
33 cross-examined on the declaration at any hearing conducted
34 under this section or on an application by or on behalf of the
35 convicted person filed pursuant to Section 1405.

36 (3) No other provision of law requires that biological evidence
37 be preserved or retained.

38 (c) Notwithstanding any other provision of law, the right to
39 receive notice pursuant to this section is absolute and shall not be
40 waived. This prohibition applies to, but is not limited to, a waiver

- 1 that is given as part of an agreement resulting in a plea of guilty
- 2 or nolo contendere.

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